

Message Text

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ACTION SNM-05

INFO OCT-01 ARA-14 ISO-00 L-03 PPTE-00 CA-01 DEAE-00
/024 W

-----003049 181947Z /70

R 171950Z AUG 78
FM AMEMBASSY SAN SALVADOR
TO SECSTATE WASHDC 9277
INFO AMEMBASSY GUATEMALA

UNCLAS SAN SALVADOR 4293

E.O. 11652: N/A
TAGS: SNAR ES
SUBJ: NARCOTICS LAWS

REF: (A) STATE 170187, (B) STATE 203321

1. NARCOTIC LAWS OF EL SALVADOR ARE COVERED IN THE THIRD PART OF THE PENAL CODE, "CRIMES AGAINST THE SOCIAL WELLBEING." ARTICLES 300 THROUGH 305 OF TITLE I, CHAPTER III, "CRIMES AGAINST HEALTH," SPECIFICALLY INCORPORATE THE BULK OF THE NARCOTIC LAWS. THERE ARE TREASURY POLICE CONTRABAND LAWS AND CUSTOMS LAWS WHICH MIGHT BE APPLICABLE, HOWEVER, THE AFORE-MENTIONED PENAL CODE SECTIONS ARE SPECIFIC.

2. SINCE THE ARTICLES ARE NOT LENGTHY, AND ARE SELF SERVING REGARDING THE GENERALITY OF THE LAWS, A LITERAL TRANSLATION FOLLOWS:

ARTICLE 300 - THOSE WHO WITHOUT AUTHORITY, ILLEGALLY, PLANT, CULTIVATE OR HARVEST SEEDS OR PLANTS FROM WHICH NATURALLY OR BY MEANS OF CHEMICALS, ADULTRIANTS OR INDUSTRIAL PROCESSING, CAN BE OBTAINED SUBSTANCES OR ENERVATING DRUGS, NARCOTICS OF HALLUCINEGENS, AND WHO ILLEGALLY ELABORATES THESE PRODUCTS, WILL BE PUNISHED BY IMPRISONMENT FROM THREE TO SEVEN YEARS.

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ARTICLE 301 - WHOEVER IMPORTS OR EXPORTS, SELLS OR EXPENDS, TRANSPORTS, SUPPLIES FOR THE USE OR PREPARATION TO OTHERS, IN ANY MANNER, SEEDS, LEAVES, PLANTS OR SUBSTANCES OR PRODUCTS MENTIONED IN THE PREVIOUS ARTICLE, WILL BE PUNISHED BY IMPRISONMENT FROM THREE TO SEVEN YEARS.

ARTICLE 302 - (REFORMED ON 10/20/77) - THOSE WHO ARE NOT AUTHORIZED TO SELL, AND HAVE IN THEIR POSSESSION SEEDS, LEAVES, PLANTS OR SUBSTANCES OR PRODUCTS MENTIONED IN ARTICLE 300, IN QUANTITIES THAT ACCORDING TO THE JUDICIAL OPINION OF THE JUDGE, ARE ASSUMED TO BE FOR COMMERCIALIZATION AND DO NOT JUSTIFY THE LEGITIMATE REASON FOR THEIR POSSESSION, WILL BE PUNISHED BY IMPRISONMENT FROM THREE TO FIVE YEARS.

ARTICLE 303 (REFORMED ON 10/20/77) - ANYONE WHO IS NOT CRIMINALLY LIABLE UNDER THE FACTS INDICATED IN THE THREE PREVIOUS ARTICLES, CAUSES OR PERMITS A LOCATION FOR THE REUNION OF PERSONS WHO INTEND TO CONSUME ENERVATING DRUGS, NARCOTICS OR HALLUCINEGENS, OR TO ILLEGALLY STORE THEM, WILL BE PUNISHED WITH IMPRISONMENT FROM THREE TO FIVE YEARS.

ARTICLE 304 - ANY PERSON WITH PROFESSIONAL FACULTY AUTHORIZED, WHO PRESCRIBES STIMULATING DRUGS, NARCOTICS OR HALLUCINEGENS OUTSIDE OF THE CASES INDICATED AS THERAPY OR IN DOSES OBVIOUSLY GREATER THAN NECESSARY OR IN VIOLATION OF LAWS OR REGULATIONS CONCERNING THE MATTER, WILL BE PUNISHED BY IMPRISONMENT FROM ONE TO THREE YEARS.

ARTICLE 305 - FOR THE PURPOSE OF THE PREVIOUS FIVE ARTICLES, SUBSTANCES OR ENERVATING DRUGS, NARCOTICS OR HALLUCINEGENS DETERMINED BY THE LAWS OR REGULATIONS IN FORCE REGARDING THE MATTER, AS THOSE MENTIONED AS SUCH BY THE INTERNATIONAL UNCLASSIFIED

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TREATIES RATIFIED BY EL SALVADOR, AND GENERALLY, THOSE, WITH EXCEPTION TO ALCOHOLIC BEVERAGES, THAT AFFECT THE INTELLECTUAL OR PSYCHIC FACULTIES OR PRODUCE A STATE OF ABNORMAL EXCITEMENT OR FALSE PRECEPTIONS IN THE SUBJECT WHO USES THEM.

3. AS STATED PREVIOUSLY, THE LAWS ARE GENERAL AND SHOULD ANSWER MOST OF THE QUESTIONS IN THE REFTEL. THERE ARE SEVERAL POINTS, HOWEVER, THAT SHOULD BE ELABORATED:

A. EL SALVADOR IS NOT SIGNATORY TO THE SINGLE CONVENTION ALTHOUGH THIS HAS ALREADY BEEN PROPOSED VIA NOTE TO FOREIGN MINISTRY DATED APRIL 5, 1978.

B. THERE IS NO CONTROLLED SUBSTANCES LIST SUCH AS THE "SCHEDULED CONTROLLED SUBSTANCES" IN FEDERAL U.S. LAWS. THE DETERMINATION OF WHAT ARE OR WHAT ARE NOT DRUGS OR NARCOTICS COVERED BY THESE ARTICLES IS DISCUSSED IN ARTICLE 305, WHICH SEEMS ALL-ENCOMPASSING. SINCE THERE IS NO LIST, THE PHRASE "...DETERMINED BY THE LAWS OR REGULATIONS," IS SOMEWHAT AMBIGUOUS. THE MAGISTRATE HAS WIDE DESCRETION IN THIS MATTER AND WILL USUALLY ACCEPT THE OPINION OF EXPERTS IN DETERMINING WHETHER A SUBSTANCE IS A DRUG OR NARCOTIC TYPE

OR NOT. THERE IS NOT A STATUTORY REQUIREMENT OF SPECIFYING THE SUBSTANCE CONTROLLED. IT WOULD SEEM, HOWEVER, THAT ANYTHING, OTHER THAN ALCOHOL, IS GENERALLY COVERED.

C. THE CRIMINAL LAWS ARE NAPOLEONIC CODE TYPE AND AS SUCH THERE IS NO CONSPIRACY LAW AS IN THE U.S. CONSPIRACY AS A CONCEPT IS DEFINED BUT NOT SANCTONED SPECIFICALLY. THERE ARE PROVISIONS FOR ATTEMPTED CRIMES AND ACCOMPLICES TO CRIMES.

D. EL SALVADOR'S NARCOTIC LAWS AND PENALTIES ARE NOT AFFECTED BY THE TYPES OF NARCOTICS INVOLVED, PER SE, AT LEAST NOT STATUTORILY. DURING THE LAST NARCOTIC LAW REFORM IN OCTOBER 1977, IT WAS LEGISLATED TO THE MAGISTRATE THAT CONSIDERATION BE GIVEN REGARDING THE QUANTITY OF THE DRUG IN UNCLASSIFIED

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DETERMINING "COMMERCIALIZATION," I.E., TRAFFICKING.

E. ALTHOUGH THERE ARE NO SPECIFIC STATUTES COVERING FINANCIAL FACILITATION, TRAFFICKING AND ELABORATION, THESE ARE COVERED WITHIN THE AFOREMENTIONED ARTICLES UNDER THE GENERAL APPLICATION GIVEN TO THE STATUTES AND THE "ACCOMPLICE" AND "AIDOR" AND "ABETTOR" PROVISIONS IN THE LAW.

5. CRIMINAL PROCEDURE:

A. INVESTIGATIVE DETENTION FOR UP TO THREE MONTHS IS AUTHORIZED UNDER SALVADORAN LAW. THE PERIOD OF INVESTIGATION DOES NOT, IN NORMAL PRACTICE, EXCEED TEN DAYS AND CONSULAR ACCESS IS PERMITTED. WHILE EL SALVADOR IS PARTY TO VIENNA CONVENTION ON CONSULAR RELATIONS, ARRESTEES ARE NOT NORMALLY NOTIFIED OF RIGHT TO CONTACT CONSUL. LOCAL SECURITY FORCES USUALLY (BUT NOT ALWAYS) NOTIFY EMBASSY OF ARREST OF U.S. CITIZENS; AT TIMES, HOWEVER, THEY NOT ONLY DO NOT NOTIFY EMBASSY BUT REFUSE TO ACKNOWLEDGE THAT THEY HAVE THE U.S. CITIZEN IN CUSTODY. THIS HAS BEEN SUBJECT OF NUMEROUS PROTESTS BY EMBASSY.

B. PRETRIAL DETENTION MAY BE UP TO THREE MONTHS' INVESTIGATIVE DETENTION PLUS TWO MONTHS AFTER CASE IS FORMALLY PRESENTED TO COURT.

C. THREE DAYS FOR PRESENTATION OF EVIDENCE, THREE MONTHS FOR CONSIDERATION OF CASE BY COURT, TWO MONTHS FOR APPEAL.

D. JUDGE MAY APPOINT PUBLIC DEFENDER (USUALLY A LAW STUDENT) IF HE BELIEVES SERIOUSNESS OF CASE WARRANTS SUCH APPOINTMENT.

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E. JUDGE MAY GRANT CONDITIONAL RELEASE IN CASES WHERE SENTENCE IS ONE TO THREE YEARS IN PRISON. CONDITIONAL RELEASE MAY BE GRANTED IN MORE SERIOUS CASES AFTER PRISONER HAS COMPLETED ONE HALF (IN HOMICIDE CASES, THREE FOURTHS) OF SENTENCE.

F. MINOR OFFENDERS WHO ARE NOT SALVADORAN CITIZENS ARE USUALLY EXPELLED FROM THE COUNTRY, WITHOUT TRIAL BY ORDER OF THE DIRECTOR GENERAL OF IMMIGRATION PURSUANT TO A DIRECTIVE FROM THE MINISTER OF DEFENSE OR MINISTER OF THE INTERIOR. IN OUR EXPERIENCE, FOREIGNERS SUSPECTED, BUT NOT FORMALLY ACCUSED OF USING MARIJUANA USUALLY ARE REFUSED EXTENSION OF STAY AND ORDERED TO LEAVE THE COUNTRY BUT ARE NOT ACTUALLY EXPELLED BY IMMIGRATION OFFICERS.

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DRUG CONTROL, LAW
Control Number: n/a
Copy: SINGLE
Draft Date: 17 aug 1978
Decapton Date: 01 jan 1960
Decapton Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978SANS04293
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780338-0996
Format: TEL
From: SAN SALVADOR
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780853/aaaabsid.tel
Line Count: 189
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: d7a0fc61-c288-dd11-92da-001cc4696bcc
Office: ACTION SNM
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 170187, 78 STATE 203321
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 13 jun 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1708852
Secure: OPEN
Status: NATIVE
Subject: NARCOTICS LAWS
TAGS: SNAR, ES
To: STATE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/d7a0fc61-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014